

J.D.W. asks the Utah Labor Commission to review Administrative Law Judge Marlowe's summary dismissal of Mr. W.'s claim for benefits under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

In his motion for review, Mr. W. argues that Judge Marlowe exceeded her authority in dismissing his claim. However, before considering the issue raised in Mr. W.'s motion for review, the Labor Commission must first determine whether the motion for review was filed within the 30 day time limit imposed by the Utah Administrative Procedures Act ("UAPA"; Title 63, Chapter 46b, Utah Code Ann.).

FINDINGS OF FACT

The Judge Marlowe issued her Order of Dismissal on March 7, 2005. That same day, a copy of the ALJ's decision was mailed to Mr. W. at his correct mailing address. On August 15, 2005, the Labor Commission received Mr. W.'s motion for review.

DISCUSSION AND CONCLUSIONS OF LAW

Section 63-46b-12 of UAPA allows a party dissatisfied with an ALJ's decision 30 days in which to file a motion for review with the Labor Commission. A motion for review is not "filed" until it is actually received by the Labor Commission.

In this case, Judge Marlowe's decision was issued on March 7, 2005, but Mr. W.'s motion for review was not received until 161 days later, on August 15, 2005. Consequently, Mr. W. failed to file his motion for review within the 30 day period allowed by law.

ORDER

The Labor Commission dismisses Mr. W.'s motion for review as untimely. The prior decision of the ALJ remains in effect. It is so ordered.

Dated this 18th day of August, 2005.

R. Lee Ellertson, Utah Labor Commissioner